

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U 39 M), a California Corporation, and William L. Brickner for an Order Authorizing the Sale and Conveyance of a Certain Parcel of Land in Alameda County Pursuant to the Public Utilities Code Section 851.

Application 02-12-033  
(Filed December 20, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING ON  
DISPOSITIVE MOTIONS AND SUBSEQUENT PROCEEDINGS**

**1. Pending Motions**

I have reviewed the parties' dispositive motions and the record to date in this proceeding. Of the many material facts stipulated to by the parties, I note they agree that the property (before any transfer) has been used for transmission-related purposes and has been classified as a transmission asset in PG&E's rate base. In addition to these facts, several applicable legal principles also appear to be beyond question.

First, the Commission has jurisdiction to approve or disapprove this transfer. PG&E has invoked the Commission's jurisdiction to approve the transfer pursuant to Section 851 of the Public Utilities Code. While the parties cannot vest a forum with subject matter jurisdiction it does not otherwise have, the Commission has previously decided it has jurisdiction to approve transfers of transmission-related properties under Section 851. *See, e.g.*, D.01-09-049 (2001 Cal. PUC LEXIS 841), *In re Southern California Edison Co.*, No. A.01-07-018

(Sept. 20, 2001); D.02-01-058 (2002 Cal. PUC LEXIS 11), *In re Pacific Gas & Elec. Co.*, No. A.01-10-041 (Jan. 23, 2002).

Second, I conclude that the property is legally characterized as “transmission-related property.” I find unconvincing ORA’s argument that PG&E’s retention of an easement for transmission purposes changes the character of the conveyed portion. As PG&E indicates, this would lead to a situation where Section 851 proceedings would be unnecessary in many situations if a utility first subdivided the property or created separate legal interests.

The law applicable to any “gain-on-sale” proceeds, however, remains undetermined. In deciding the disposition of any proceeds from the sale of transmission-related property, the Commission must make a choice of law (PG&E’s comment notwithstanding): Is it required to follow federal law as enunciated by FERC? Or is the Commission free to apply state law as articulated by legislation and prior court and agency decisions?

I agree with PG&E that, if FERC has previously determined the disposition of proceedings from transmission-related property, I will apply that federal rule to any proceeds here under principles of federal preemption. However, PG&E has so far failed to demonstrate convincingly that (a) a federal allocation rule exists as to transmission-related property; and (b) if such a rule does exist, it requires the allocation of gain-on-sale to shareholders. In arguing for the application of state law, ORA appears to suggest that the outcome depends on the circumstances of the property and transfer, as well as principles of equity.

PG&E has cited to FERC’s statement of accounts, especially to Account 421.1, Gain on Disposition of Property, and Section E of Accounting Instruction 7 (Land and Land Rights). 18 C.F.R. pt. 101 (2002). The Commission

has adopted FERC's Uniform System of Accounts for electric utilities.

D.87-07-067, *In re Uniform System of Accounts for Electrical Corps.*, 25 CPUC 2<sup>d</sup> 7 (1987).<sup>1</sup> While posting proceeds to Account 421.1 may ultimately be the appropriate accounting treatment for any gain on sale, this citation alone does not convince me that FERC has decided that the proceeds are assigned to shareholders. FERC Orders 420 and 420A, to which PG&E has directed my attention, may indeed establish Account 421.1 as a nonutility account; but FERC's prefatory comments in Order 420 appear to refute PG&E's position. FERC indicates that it is adopting a "Proposal A" that allows gain or losses to be passed to *ratepayers* upon final disposition. FERC Order No. 420, 45 FPC 106 107 n.2 (1971). FERC summarizes this proposal as follows: "[T]he prescribed accounting does not provide for the disposition of the stockholder's original investment above the line to the ratepayer but merely provides that the profit or loss shall be so disposed leaving the original investment undisturbed." *Id.* 108.

Order No. 420 possibly may be distinguished from our case. The order's preface addresses land held for future use, and I am uncertain whether the property here fits that description. FERC also indicates that, "Any company will have the opportunity in a rate proceeding to propose whatever rate treatment it deems appropriate." *Id.* If Order No. 420 is not the applicable federal rule, however, PG&E must point us to the appropriate one.

ORA's motion for summary disposition is GRANTED to the extent that the Commission has jurisdiction to decide the allocation of the gain on sale. PG&E's

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<sup>1</sup> D.87-07-067 indicates that, in adopting the Uniform System of Accounts, "the Commission does not commit itself to approve or accept any item set out in any account for the purpose of fixing rates." 25 CPUC 2<sup>d</sup> at 8.

motion is GRANTED to the extent that the property is factually and legally characterized as transmission-related property. The parties' motions are DENIED in all other respects. My determinations remain subject to modification or rejection by the Commission as provided in its *Rules of Practice and Procedure*.

## **2. Subsequent Proceedings**

The parties have not come to an agreement for the early conveyance of the property to Mr. Brickner. PG&E would consent if the treatment of gain were deferred; ORA wants the issue addressed in this proceeding. The Scoping Memo calls for me to decide the assignment of gain issue. The Commission, however, may choose to defer the issue when the proposed decision reaches that body.

We will proceed to hearing commencing at 9:00 a.m. on Thursday, April 24, 2003 (continuing as necessary on April 25), pursuant to the hearing schedule set forth on page 5 of the Scoping Memo (Mar. 12, 2003). The present ruling addresses issues "a" through "d" on page 3 of the Scoping Memo. Thus, the hearing will be limited to evidentiary matters pertaining to issue "e." In advance of the hearing, I encourage the parties to reach any additional stipulations that will expedite the hearing. At the hearing, I will discuss the possibility of expedited briefing of any remaining legal issues.

The parties shall meet with me at 8:30 a.m. on Thursday, April 24, 2003, to review the proposed exhibits. Each party shall mark its exhibits in advance using this form: "A0212033/Ex. XXX." The parties are assigned these number series: PG&E: 001 to 099; Mr. Brickner, 100-199; and ORA, 200-299. Parties shall also prepare a log sheet for their exhibits with four columns with these headings: "Exhibit No.," "Exhibit Description," "Date Offered," and "Date Received." The

“Exhibit No.” and “Exhibit Description” columns will be completed in advance for the exhibits each party intends to offer. Parties shall also follow the exhibit requirements as set forth in Appendix A.

Dated April 9, 2003, at San Francisco, California.

/s/ John E. Thorson  
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John E. Thorson  
Administrative Law Judge

## **Appendix A**

### **EXHIBITS**

#### **Service of Exhibits**

Paper copies of all prepared written testimony shall be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Electronic copies shall be served on the entire service list, including information only. Do NOT file prepared written testimony with the Commission's Docket Office. (Such testimony becomes part of the record only after it is admitted into evidence.)

#### **Identification of Exhibits in the Hearing Room**

Each party sponsoring an exhibit shall, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet shall be blank for the ALJ's exhibit stamp.** Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

#### **Cross-examination With Exhibits**

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties

have otherwise agreed to prior disclosure, such as in the case of confidential documents.

### **Corrections to Exhibits**

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word “revised” and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

**End of Appendix A**

## CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Dispositive Motions and Subsequent Proceedings on all parties of record in this proceeding or their attorneys of record.

Dated April 9, 2003, at San Francisco, California.

/s/ Antonina V. Swansen  
Antonina V. Swansen

## N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.